

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GREGORY LEE GRAY,
Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,
Respondent.

Case No. [16-cv-00002-PJH](#)

**ORDER GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS AND
DISMISSING CASE**

Re: Dkt. Nos. 2, 3

This is a habeas case brought pro se by a state prisoner regarding his 1997 conviction. Petitioner filed a previous case attacking the same judgment, *Gray v. Runnels*, C 01-2880 PJH (PR). That case was dismissed as barred by the statute of limitations and the dismissal was affirmed on appeal.

A subsequent habeas petition directed to the same conviction, *Gray v. Felker*, 09-2461 PJH (PR), was dismissed by this court as second or successive. Petitioner did not appeal that dismissal.

Petitioner then filed another petition attacking the same judgment, *Gray v. McDonald*, 10-0845 PJH (PR). As petitioner still had not obtained an order from the Ninth Circuit allowing him to file a second or successive petition, it also was dismissed. This court denied petitioner's motions for a certificate of appealability and for leave to proceed in forma pauperis on appeal, and in October of 2010 the Ninth Circuit issued an order declining to grant a certificate of appealability, terminating the appeal. The United States Supreme Court subsequently denied his petition for certiorari.

Petitioner filed additional habeas petitions, *Gray v. McDonald*, 10-5748 PJH (PR) and *Gray v. Spearman*, 14-2437 PJH (PR), that were also dismissed as second or

1 successive. This court and the Ninth Circuit denied his requests for a certificate of
2 appealability in both cases. The United States Supreme Court denied his petition for
3 certiorari in *Gray v. Spearman*, 14-2437 PJH (PR).

4 A habeas petitioner may not file a second or successive petition unless he or she
5 first obtains from the appropriate United States Court of Appeals an order authorizing the
6 filing. See 28 U.S.C. § 2244(b)(3)(A). Petitioner has still not obtained such an order from
7 the Ninth Circuit. Therefore this case is dismissed.

8 CONCLUSION

9 Petitioner's motion for leave to proceed in forma pauperis (Docket No. 2) is
10 **GRANTED**. The motion for a stay (Docket No. 3) is **DENIED** and the petition is
11 **DISMISSED** for the reasons set out above. Because reasonable jurists would not find
12 the result here debatable, a certificate of appealability ("COA") is **DENIED**. See *Slack v.*
13 *McDaniel*, 529 U.S. 473, 484-85 (2000) (standard for COA). The clerk shall close the file.

14 **IT IS SO ORDERED.**

15 Dated: January 12, 2016



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18 PHYLLIS J. HAMILTON
United States District Judge

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